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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES W. BROWN, on behalf of himself
and all others similarly situated, on behalf
of the general public, and as an "aggrieved
employee" under the California Labor
Code Private Attorneys General Act,

Plaintiff,

vs.

CLEARPOINT ADVANTAGE, LLC,
dba ADVANTAGE SERVICES GROUP

Defendants.

Case No. CV 08-01640 WHA

**JOINT CASE MANAGEMENT
STATEMENT [JOINT RULE 26 REPORT]**

Hearing Date: July 3, 2008
Time: 11:00 a.m.
Place: Courtroom 9, 19th Floor
Judge: Hon. William H. Alsup

Complaint Filed: January 9, 2008
Trial Date: Not set yet.

1 TO THE UNITED STATES COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA:

2 Pursuant to Civil Local Rule 16-9, Plaintiff James W. Brown ("Plaintiff") and Defendant
3 ClearPoint Advantage, LLC ("Defendant" or "ClearPoint"), submit this Joint Case Management
4 Statement. This statement sets forth the matters on which the parties have reached agreement,
5 and their respective views on the matters about which they disagree.

6 **1. JURISDICTION AND SERVICE**

7 On March 26, 2008, Defendant removed this action from the Superior Court, County of
8 Alameda on the grounds that it is incorporated in Delaware, has its principal place of business in
9 Pennsylvania, and that this Court has subject matter jurisdiction under 28 U.S.C. Sections 1332,
10 1446 and 1453, and the Class Action Fairness Act of 2005. The parties agree that the Court has
11 jurisdiction over this action.

12 All named parties have been served.

13 **2. FACTUAL SUMMARY AND DISPUTES**

14 **A. Plaintiff's Statement**

15 Defendant operates a temporary employment agency. Defendant employed Plaintiff on
16 various temporary assignments during April 2006, May 2006, January 2007, March 2007, and
17 July 2007. Plaintiff anticipates discovery will be needed to identify any and all of Defendant's
18 predecessor entities who employed Plaintiff. Plaintiff brings a putative class action alleging: (1)
19 Defendant issued employees checks from an out-of-state bank with no in-state address for
20 presentation and no provision for negotiating such paychecks at no cost in violation of Labor
21 Code § 212; (2) Defendant did not pay overtime compensation and did not provide accurate wage
22 statements to employees who worked over eight hours a day during those weeks when the
23 employee worked less than the full schedule of four ten hour days ("4/10"); (3) Defendant failed
24 to pay plaintiffs and putative class members in a timely manner as required by Labor Code §
25 204(b); (4) former employees of the Defendant are entitled to waiting time penalties under Labor
26 Code § 203, (5) employees who did not receive their final wages at the end of an assignment and
27 who had not started a new assignment by the next regularly scheduled pay day are entitled to
28 Labor Code § 203 waiting time penalties. Plaintiff also seeks disgorgement, restitution, and other

1 relief pursuant to California Business and Professions Code § 17200.

2 **B. Defendant's Statement**

3 Plaintiff was employed by Defendant for 4 days in July 2007 (July 3, 5, 6 and 10.). In
 4 his complaint, Plaintiff, on behalf of himself and putative class members, alleges that: (1)
 5 Defendant issued employees checks from an out-of-state bank with no in-state address in
 6 violation of Labor Code § 212; (2) Defendant did not pay overtime to employees who were on a
 7 4/10 alternative work schedule during weeks when employees worked less than a full work week,
 8 and that overtime is required during weeks when the employees worked a 4/10 schedule for less
 9 than a full work week; (3) Defendant failed to pay employees who ended their assignments and
 10 had not started a new assignment by the next payday on the final day of their assignment. In
 11 addition to overtime, Plaintiff seeks penalties under the Private Attorneys General Act, penalties
 12 under Labor Code §226, and waiting time penalties pursuant to Labor Code § 203. Plaintiff also
 13 seeks disgorgement, restitution and other relief pursuant to California Business and Professions
 14 Code §17200.

15 **3. LEGAL ISSUES**

16 **A. Joint Statement of Legal Issues**

- 17 (1) Whether Plaintiff received wages from Defendant in the form of checks issued by
 18 an out-of-state bank with no in-state address in violation of Labor Code § 212;
- 19 (2) Whether Plaintiff was improperly denied overtime during his 4/10 alternative work
 20 schedule;
- 21 (3) Whether Plaintiff was improperly not paid his wages in a timely manner in
 22 violation of Labor Code §204(b);
- 23 (4) Whether Plaintiff is entitled to "waiting time" penalties pursuant to California
 24 Labor Code Section 203;
- 25 (5) Whether Plaintiff was provided inaccurate wage statements in violation of Labor
 26 Code §226;
- 27 (6) Whether class certification is warranted under Rule 23 and, if so, the
 28 scope/definition of the class;

(7) Whether any of the purported wage/hour violations alleged by Plaintiff in his Complaint constitute “unlawful,” “unfair,” or “fraudulent” business practices under Section 17200 of the California Business and Professions Code;

(8) Whether putative class members were treated in the same manner as Plaintiff as set forth in the parties’ joint statement of the issues.

(9) Whether the requirements of Rule 23 apply to Plaintiff’s claims asserted under the Private Attorneys General Act (PAGA);

(10) Whether Plaintiff can maintain a claim under Section 17200 of the California Business and Professions Code on behalf of himself and/or others;

(11) Whether Plaintiff is entitled to PAGA penalties, and if so how much.

(12) Whether Defendant or any other predecessor entity is responsible for any purported labor violations that occurred prior to Defendant’s parent company ClearPoint Business Resources, Inc.’s acquisition of the assets of Plaintiff’s employer ALS, LLC.

Discovery, which is not yet underway, may reveal additional legal issues in dispute.

4. MOTIONS

A. Prior Motions

There have been no motions filed.

B. Pending Motions

There are no motions pending.

C. Anticipated Motions

Plaintiff intends to file a Motion for Class Certification.

Defendant anticipates filing a Motion for Summary Judgment or, in the Alternative, Partial Summary Judgment.

5. AMENDMENT OF PLEADINGS

Plaintiff requests permission to amend the Complaint to include additional class representatives if Plaintiff is deemed not to be an adequate representative of the class.

6. EVIDENCE PRESERVATION

The parties are aware of their obligation to preserve relevant evidence, including

electronically stored information, and have taken steps to comply with their obligations.

7. DISCLOSURES

The parties anticipate exchange of their Rule 26(a)(1) Initial Disclosures on June 26, 2008.

8. DISCOVERY

A. Discovery to Date

None.

B. Scope of Discovery

Plaintiff's Position:

Plaintiff believes that class certification discovery should begin immediately. The claims in this case all hinge on Defendant's common course of conduct and Defendant's record keeping. The evidence Plaintiff anticipates using for certification of his claims is primarily in Defendant's custody and control which will be produced in discovery. Plaintiff intends to propound requests for documents and interrogatories, and to take depositions of Defendant's employees at a mutually agreeable date after receiving and analyzing Defendant's responses to the written discovery.

Defendant's Position:

Defendant believes that class-wide discovery is premature at this stage. Discovery should be limited to Plaintiff's individual claims and discovery which is directly relevant to the issue of whether a class may be certified. Defendant intends to propound requests for documents and interrogatories, and to take the deposition of the Plaintiff at a mutually agreeable date after receiving and analyzing Plaintiff's responses to the written discovery.

C. Modifications of Discovery Rules

The parties do not believe that any modification of the discovery rules is necessary at this time.

D. Proposed Discovery Plan

See Pretrial Schedule in Paragraph 17.

1 **9. CLASS ACTIONS**

2 **PLAINTIFF'S STATEMENT:**

3 **(A) This Class Action is Maintainable under Fed. Rule Civ. Pro 23**

4 This class action is maintainable under Fed. Rule Civ. Pro. 23(a) and 23(b)(3).

5 **(B) Description of the Classes**

6 (1) In Class I, Plaintiff seeks to represent a class of all persons who are or were
7 employed by Defendant in the State of California who Defendant paid wages in the form of an
8 out of state bank with no in-state address for presentation and no provision for negotiating such
9 paychecks in California at no cost.

10 (2) In Class II, Plaintiff seeks to represent a class of all persons who are or were
11 employed by the Defendant in the State of California who did not receive overtime for all
12 premium hours worked over eight in a day during those weeks when the employee worked less
13 than the full 4/10 work week.

14 (3) In Class III, Plaintiff seeks to represent a sub-class of Class II members who are or
15 were employed by Defendant in the State of California within the one year preceding the filing of
16 the Complaint and who failed to receive their wages in a timely manner as required by Labor
17 Code § 204(b).

18 (4) In Class IV, Plaintiff seeks to represent a second sub-class of all Class II class
19 members who are former employees and who are entitled to Labor Code § 203 waiting time
20 penalties.

21 (5) In Class V, Plaintiff seeks to represent a class of employees who were assigned to
22 work for clients of the Defendant and who did not receive their final wages on the last day of their
23 assignment and who had not started a new assignment by the time of the next regularly scheduled
24 pay day and who are thereby entitled to Labor Code § 203 waiting time penalties.

25 **(C) Facts Supporting Class Certification**

26 For each class, Plaintiff's claims are typical of the claims of the members of the class
27 Plaintiff seeks to represent. Plaintiff will fairly and adequately represent the interests of the class
28 members because Plaintiff is a member of the class and the claims of Plaintiff are typical to those

1 of the class. Plaintiff has retained attorneys who are experienced in the prosecution of class
2 actions, and Plaintiff intends to prosecute this action vigorously. Each class contains at least
3 seventy-five employees, and therefore is so numerous that the joinder of each member of the class
4 is impracticable.

5 There are common issues of law and fact that predominate over any individual issues for
6 each class:

7 (1) In Class I, there is a well defined community of interest in law and fact as the class
8 members' claims are based upon the Defendant's implementation and utilization of a policy
9 pursuant to which all members of the class received paychecks in the same manner that violated
10 California law.

11 (2) In Class II, there is a well defined community of interest in law and fact as the
12 class members' claims are based on Defendant's implementation and utilization of a policy
13 pursuant to which all members of the class were denied overtime and were not issued accurate
14 wage statements.

15 (3) In Class III, there is a well defined community of interest in law and fact as the
16 class members' claims are based on Defendant's implementation and utilization of a policy
17 pursuant to which all members of the class failed to receive their wages in a timely manner as
18 required by Labor Code § 204(b).

19 (4) In Classes IV and V, there is a well defined community of interest in law and fact
20 as the class members' claims are based on Defendant's implementation and utilization of a policy
21 pursuant to which all members of the class failed to receive their wages in a timely manner as
22 required by Labor Code §§ 201-203.

23 A class action is superior to other available methods for the fair and efficient adjudication
24 of this controversy. Individual litigation would present the potential for varying, inconsistent, or
25 contradictory judgments which would establish inconsistent standards of conduct, and would
26 magnify the delay and expense to all parties and to the court system resulting from multiple trials
27 of the same complex factual issues. By contrast, the conduct of this action as a class action
28 presents few or no management difficulties, conserves the resources of the parties and of the court

1 system, and protects the rights of each Class member. Plaintiff anticipates no difficulty in the
2 management of this action as a class action.

3 **(D) Proposed Class Certification Date**

4 See Pretrial Schedule in Paragraph 17.

5 **DEFENDANT'S STATEMENT:**

6 Defendant disputes that Plaintiff has standing to pursue class claims and disputes that
7 certification of any class is warranted under Rule 23.

8 **10. RELATED CASES**

9 At this time, the parties are not aware of any related cases.

10 **11. PLAINTIFF'S REQUEST FOR RELIEF**

11 Plaintiff cannot place a dollar amount on damages at this point in time as discovery has
12 not yet been conducted.

13 Plaintiff seeks civil penalties; damages in accordance to proof at trial for unpaid premium
14 overtime compensation; waiting time penalties; disgorgement of profits and restitution of all costs
15 incurred and/or losses caused by Defendant's conduct; an injunction enjoining Defendant from
16 future violations of Labor Code § 212; interest on any sums awarded as allowed by law; all
17 reasonable attorneys' fees and all costs of this suit as allowed by law; and any other and further
18 relief that the court deems just and proper.

19 **12. SETTLEMENT AND ADR**

20 The parties will determine which form of alternative dispute resolution is appropriate after
21 conducting initial discovery.

22 **13. CONSENT TO MAGISTRATE JUDGE**

23 The parties do not consent to proceed before a magistrate judge.

24 **14. OTHER REFERENCES**

25 None presently.

26 **15. NARROWING OF ISSUES, PRESENTATION OF EVIDENCE**

27 At this stage in the proceedings, the parties are unaware of any issues that can be
28 narrowed by agreement or motion. The parties agree to continue to meet and confer regarding

these issues and to inform this Court as applicable in the event discovery indicates agreement may be reached on the scope of any issues or reveals any additional basis to narrow the issues through motion practice.

16. EXPEDITED SCHEDULE

The parties agree this case is not appropriate for an expedited or streamlined procedure.

17. SCHEDULING

The parties propose the following schedule:

Pretrial or Trial Event	Plaintiff's Requested Deadline	Defendant's Requested Deadline
Deadline to Amend Pleadings	November 3, 2008 Plaintiff anticipates amendment may be warranted after discovery concerning Defendant's predecessor entities is produced	November 3, 2008
Deadline to Motion for Class Certification	January 22, 2009	March 31, 2009

The remainder of the pretrial schedule will be determined following resolution of the class certification motion.

18. TRIAL

The parties believe that the length of trial will depend on the outcome of the class certification ruling.

19. DISCLOSURE OF INTERESTED ENTITIES

Defendant filed its Certificate of Interested Parties on March 26, 2008. Defendant certified that the following parties were interested parties: ClearPoint Business Resources, Inc., ClearPoint Resources, Inc., ALS, LLC and Advantage Services Group.

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20. **OTHER MATTERS**

At this time, the parties do not have any other additional matters that should be raised.

Dated: June 26, 2008

MORGAN, LEWIS & BOCKIUS LLP

By /s/ Melinda S. Riechert

Melinda S. Riechert
Attorneys for Defendant
ClearPoint Advantage, LLC, dba
Advantage Services Group

Dated: June 26, 2008

KELLER GROVER LLP

By /s/ Eric A. Grover

Eric A. Grover
Attorneys for Plaintiff
James W. Brown

Dated: June 26, 2008

LAW OFFICES OF SCOT BERNSTEIN

By /s/ Scot Bernstein

Scot Bernstein
Attorneys for Plaintiff
James W. Brown

ECF CERTIFICATION

Pursuant to General Order No. 45, § X.B, the filing attorney attests that she has obtained concurrence regarding the filing of this document from each of the signatories to the document.

Dated: June 26, 2008

By: /s/ Melinda S. Riechert
Melinda S. Riechert